



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 10, 2004

Ms. Clara Ward Flores  
County Auditor  
Nacogdoches County  
101 West Main, Suite 110  
Nacogdoches, Texas 75961

OR2004-4735

Dear Ms. Flores:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 203071.

The Nacogdoches County Auditor's Office (the "county") received a request for "all proposals and a copy of the evaluation forms/scorer's tabulation of ALL offerors along with any recap spreadsheet that may exist" regarding the Nacogdoches County Courthouse Renovation project. You claim that the requested information may be confidential under section 552.110 of the Government Code, but make no arguments and take no position as to whether the information is so excepted from disclosure. You inform this office and provide documentation showing that you notified three interested third parties of the request and of the right of each party to submit arguments to this office as to why the information should not be released.<sup>1</sup> See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act ("Act") in certain circumstances). We have considered the arguments submitted to us by Cox and have reviewed the submitted information.

---

<sup>1</sup> The third parties that you indicate were notified pursuant to section 552.305 are the following: J.E. Kingham Construction Co. ("J.E. Kingham"), Harrison, Walker & Harper, L.P. ("HWH"), and Cox Contractors, Inc. ("Cox").

Initially, we note that section 552.305 of the Government Code allows an interested third party ten business days from the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). However, as of the date of this letter, we have not received arguments for withholding the requested information from J.E. Kingham or HWH. Therefore, we have no basis to conclude that the release of any of the submitted information would harm the proprietary interests of these interested third parties. *See, e.g.,* Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Accordingly, we conclude that the county may not withhold any portion of the submitted information on the basis of any proprietary interest that either J.E. Kingham or HWH may have in the information.

We further note, however, that a portion of the information in the J.E. Kingham proposal is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

Next, Cox argues that disclosure of the requested information would cause it substantial competitive harm and therefore this information should be excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110(b) protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]" Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 661 (1999).

Based upon our review of the arguments submitted by Cox and the information at issue, we conclude that the county must withhold portions of the information related to Cox under section 552.110(b). We have marked the information accordingly. However, we find that Cox has not made the specific factual or evidentiary showing that release of the remaining information would likely cause the company to suffer substantial competitive injury. Thus, none of the remaining information may be withheld pursuant to section 552.110(b).

In summary, the information we have marked in Cox's proposal must be withheld under section 552.110. The copyrighted information in J.E. Kingham's proposal must be released in accordance with copyright law. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Debbie K. Lee  
Assistant Attorney General  
Open Records Division

DKL/seg

Ref: ID# 203071

Enc. Submitted documents

c: Mr. Frank Pieschel  
MDI Inc., General Contractors  
322 West Second Street  
Irving, Texas 75060  
(w/o enclosures)

Mr. James A. Kingham  
J.E. Kingham Construction Co.  
P.O. Box 630632  
Nacogdoches, Texas 75963  
(w/o enclosures)

Mr. Hunter Moore  
Harrison, Walker & Harper, L.P.  
222 East Hickory Street  
Paris, Texas 75460  
(w/o enclosures)

Ms. Sandra Cox  
Cox Contractors, Inc.  
P.O. Box 631447  
Nacogdoches, Texas 75963  
(w/o enclosures)